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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,944	03/26/2004	Edward D. Glas	MS307029.01 / MSFTP637US	9894
27195 7590 05/23/2008 AMIN, TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114				
EXAMINER HUYNH, PHUONG				
ART UNIT 2857		PAPER NUMBER		
NOTIFICATION DATE 05/23/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet1@thepatentattorneys.com
hholmes@thepatentattorneys.com
lpasterchek@thepatentattorneys.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/810,944

Applicant(s)

GLAS ET AL.

Examiner

PHUONG HUYNH

Art Unit

2857

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Eliseo Ramos-Feliciano/
Supervisory Patent Examiner, Art Unit 2857

Continuation of 11, does NOT place the application in condition for allowance because:

***** Regarding claims 1 and 16, Applicant argues that "claim 1 recites dynamically adjusting at least one characteristic of at least one of the simulated users based at least in part on a browser type related to the simulated user, for distribution thereof as a percentage of total request sent to server" and that "claim 16 recites similar aspects, namely dynamically adjusting the user characteristics based on one or more browser types during the test of the server" and that "Chen et al. and Bernardin et al., when taken alone or in combination, fail to teach or suggest this aspect. (emphasis added on the limitation "BASED AT LEAST IN PART ON A BROWSER TYPE RELATED TO THE SIMULATED USER" or "BASED ON ONE OR MORE BROWSER TYPES") (see Applicant's Remarks: Page 2, line 15-Page 4, line 2).

Notice that, for example, in Paragraph [0361], Bernardin discloses "The LiveCluster Server provides the LiveCluster Administration Tool, a set of web-based tools that allow the administrator to monitor and manage the Server, its cluster of Engines, and the associated job space. The LiveCluster Administration Tool is accessed from a web-based interface, usable by authorized users from any compatible browser, anywhere on the network. Administrative user accounts provide password-protected, role-based authorization."

Accordingly, Bernardin et al. (hereinafter "Bernardin") (US Patent Application Pub. No. 2003/0191795) teaches "[t]he user characteristics is adjusted based at least in part on a browser type" [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

***** Regarding claim 5, Applicant argues that "Furthermore, claim 5 recites the characteristic statistically determined based on web log records. Though Chen, et al. discloses utilizing a log file, the log file is used to report statistics of the load testing services. Conversely, claim 5 recites characteristics statistically determined from the log, meaning that not only is the log used post-creation, but it is utilized to determine characteristics based on the contents. For example, simulated users can be based in part on users discerned from the log file. Chen, et al. discloses creating the log file. Thus, the references fail to teach or suggest this additional aspect. Moreover, the Examiner asserts that combining Chen, et al. and Bernardin, et al. would "allow an administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser." (See Final Office Action dated February 25, 2008)" [see Applicant's Remarks: Page 4, lines 3-9].

Accordingly, Chen teaches the claimed limitation of claim 5, i.e. "the characteristic statistically determined based on web log records [log file 108 in Fig. 7] [also see Chen: Abstract, lines 20-27]."

***** Further, Applicant argues that "Assuming arguendo that the combination teaches such aspects, this is not what the applicants are claiming. The claims recite dynamically adjusting simulated user characteristics based on a browser type of a simulated user, not an administrator monitoring and managing a server via a compatible browser. In applicants' claims, the browser type is causing the dynamic adjustment of user characteristics; in Bernardin, et al., however (and the combination with Chen, et al.), the browser type is not even considered." [see Applicant's Remarks: Page 4, lines 10-18]

Accordingly, the cited motivation as discussed at Page 4, lines 10-19 in Applicant's Remarks is accordingly recited for claim 1 in the Final Office Action on 02/25/2008", not for claim 5. Further, accordingly "the browser type is causing the dynamic adjustment of user characteristic" is not the claim language recited in claim 1 or claim 16.

***** Regarding claims 10 and 21, Applicant argues that "claim 10 recites a plurality of simulated users dynamically adjusted based on predetermined weightings of a user profile related to at least one of the simulated users having weighted characteristics that comprises at least a browser type therein". Claim 21 recites similar aspects, namely means for dynamically adjusting characteristics of a simulated user while loading the server. Malmkog et al. and Bernardin et al. when taken alone or in combination, fail to teach or suggest this aspect" (emphasis added on "WEIGHTED CHARACTERISTICS THAT COMPRISES AT LEAST A BROWSER TYPE") [see Applicant's Remarks: Page 5, lines 3-Page 6, line 3].

* Accordingly, in claim 10, Malmkog discloses the plurality of simulated users is dynamically adjusted based on predetermined weightings of a user profile related to at least one of the simulated users having weighted characteristics, wherein the scenario distributes user characteristics as a percentage of total requests [see Malmkog et al.: col. 2, lines 47-55; col. 3, lines 56-67, col. 4, lines 1-17 and lines 48-67; col. 5, lines 1-18; col. 6, lines 1-48, and 58-67; and col. 7, lines 7-16; col. 8, also see Figures 5-7].

However, Malmkog does not disclose that "weighted characteristics that comprises at least a browser type".

Bernardin (US Patent Application Pub. No. 2003/0191795) teaches that "weighted characteristics comprises at least a browser type" [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Malmkog to include the adjustment that is based at least in part on a browser type, as taught by Bernardin, to allow the administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

*Accordingly, in claim 21, Malmkog discloses means for distributing the simulated user characteristics as a percentage of total requests sent to the server [scenario configuration interface] [see Malmkog et al.: Figure 7]; However, Malmkog does not disclose that "weighted characteristics that comprises at least a browser type".

Bernardin teaches that "each user characteristic including at least a browser type" [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Malmkog, to include the adjustment that is based at least in part on a browser type, as taught by Bernardin, to allow the administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].